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GOVERNOR



LEONARD K. PETERS
SECRETARY

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
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COMMISSIONERS
JOE F. CHILDERS, CHAIR
WILLIAM D. DONAN
STEPHEN A. SANDERS

BRYON ALAN THOMPSON
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**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF JANUARY 13, 2011: A MEETING OF THE MINE SAFETY REVIEW COMMISSION (HEREINAFTER "MSRC" OR "COMMISSION") WAS HELD IN THE CONFERENCE AND HEARING ROOM OF THE COMMISSION LOCATED AT 132 BRIGHTON PARK BLVD., FRANKFORT KY.

- ❑ **Members Present:** Chair and Commissioner Joe F. Childers, Commissioner William D. Donan and Commissioner Stephen A. Sanders were present. Also in attendance MSRC Hearing Officer and General Counsel Bryon Alan Thompson.
- ❑ The meeting was **called to order** at 9:00 a.m. EST
- ❑ **Declaration of a Quorum:** Upon the call of the meeting, Commissioner Childers made a motion that a quorum was present, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- ❑ **Welcome Guests:** Hon. Mike Haines, Energy and Environment Cabinet General Counsel was present and also staff attorneys for OGC; Smock, Pete Thompson, Russell and Richardson who were representing the Office of Mine Safety and Licensing. The Office of General Counsel was assisted by Kari Sutherland, Mary McCoy, and Tara New.
- ❑ The **minutes** for the meeting on **12/9/10** were discussed. Commissioner Childers made a motion for approval, which was seconded. The motion carried unanimously, and was ratified by the Chair.

❑ **OMSL Motions for Sanctions, Permanent or one (1) year Revocation for failure to comply with terms of the Settlement Agreement & Final Order by MSRC resolving KRS 351.120(12) workplace suspension for alcohol and substance abuse:**

- 09-MSRC-011 Keith Adams, 09-MSRC-231 Joe A. Howard and 10-MSRC-089 Randy R. Wood Jr. were called whereupon OMSL moved for **Continuance**. The matter was seconded as appropriate, carried unanimously and ratified by the Chair.
- 09-MSRC-176 Stephen R. Varney, was called and did not appear. Joe Childers recused citing a conflict. OMSL moved to grant its motion for **permanent revocation**, enhanced testing to insure future compliance and rehabilitation. The matter was seconded as appropriate and approved unanimously and was ratified.
- 10-MSRC-119 Stephen Alan Ford was called. OMSL moved to set this for **Show Cause** for February 10. The matter was seconded as appropriate, carried unanimously and ratified by the Chair.
- 09-MSRC-179 Hi J. Carter, Jr. was called and presented proof of compliance by submitting all missing tests. OMSL moved to **withdraw**. The matter was seconded as appropriate, carried unanimously and ratified by the Chair.

❑ **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – “simple” revocations:**

- The Commission discussed each in turn the procedurally similar KRS 351.120(12) appeals from suspensions for alcohol and substance abuse policy violations of 10-MSRC-210 Timothy W Johnson, 10-MSRC-215 Derrek McClain, 10-MSRC-216 Keith Edward Collins and 10-MSRC-217 William D. Jones were each called in turn. Each Petitioner appeared and requested a **Settlement Agreement** to resolve the allegations. A motion was made to **grant**, each of their settlements which were seconded as appropriate. The motions carried unanimously, and were ratified by the Chair.
- 10-MSRC-214 Chris McLemore, was called and OMSL moved for a **Continuance** for good cause shown. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

- 10-MSRC-194 Mark J. Morton was called and did not appear. OMSL moved for **revocation** for not less than one year. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 10-MSRC-209 Gerald V. Frasure, was called and through testimony and proof demonstrated that his suspension *may be* in error. He moved to sustain his appeal. The Commission determined that his appeal would be **conditionally sustained** if he could pass a drug test taken within the next week. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair. (*addendum: test was positive, on for Show Cause Feb. 10*)
- 10-MSRC-206 Anthony M. Vanover and 10-MSRC-211 Gregory L. Cornett were called and did not appear. OMSL moved to **Show Cause**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

The 11:00 a.m. Docket for KRS 351.120(12) workplace alcohol and substance abuse suspensions that were not appealed – “simple” one year revocations:

- 10-MSRC-203 Jonathan Asher was called and OMSL informed the Commission that it desired a **Settlement Agreement**. A motion was made to **grant** the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.
- 10-MSRC-185 Gregory Scott Shepherd and 10-MSRC-186 Jack Ramey were called but did not appear. OMSL moved for **revocation**. A motion was made to **grant** the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.

The 11:00 a.m. Docket for Reciprocity actions regarding Virginia Drug Sanctions:

None submitted for this meeting.

The 11:00 a.m. Docket for Motions to Modify prior Orders:

- 10-MSRC-177 Timothy B. Roberts was called. OMSL made a motion to delete 30 suspension because an administrative error caused his file to miss the last MB meeting. Thus an **Amended Settlement** was tendered. A motion was made to **grant** the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.

11:00 a.m. Appeal of Penalty Assessment

None submitted for this meeting.

The 11:00 a.m. Docket for “traditional” type cases:

- 10-MSRC-112 Jerry B. Combs was called regarding a settlement. OMSL requested a **default**. Commissioner Childers made a motion to **grant**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order.
- 10-MSRC-007 Warrior Coal and 10-MSRC-020 Noah Vance were called for approval of a motion for **continuance**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and the Chair signed the Orders.

Petitions for an Order filed by OMSL in roof control cases:

- 10-MSRC-212 Middle Fork Mining and 10-MSRC-213 Blair Coal Co were each called in turn both in regard to a roof control plan violation. OMSL moved for an **Order** noting that Blair had paid in full. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and the Chair signed the Order.

The 1:00 p.m. Docket for “traditional” type cases:

- 10-MSRC-112 Billy W. Hamilton was called and a hearing was conducted.

Old Business

❑ **Ratification of Final Order:**

None scheduled for this meeting.

❑ **Administrative Hearings Update;**

The Commission discussed briefly the continuing high number of cases set for the next meeting on Thursday February 10, 2011, and the possibility of one or more traditional type hearings.

❑ **Status Report & Abeyances;**

None submitted for this meeting.

❑ **Appeals**

- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 07-MSRC-088 **Jerry J. Maggard**, et al. Hon. Smock, counsel for OMSL stated the matter has been **submitted** for a ruling.

New Business

❑ **Office & Administrative;**

- ❑ The General Counsel advised that the **mileage** remains forty four (44) cents per mile.

❑ **Training**

- **Required Hearing Officer Training:** Next required Hearing Officer Training is in **June 2011** at the KY History Center.
- ❑ **Executive Session:** The Commission adjourned to conduct an Executive session to discuss the motions & settlements in the cases as above and then reconvened to issue its determinations.

❑ **Probable Cause Determinations**

- 10-MSRC-218 Larry E. Lilly was presented for a determination of **probable cause**. A motion to **grant**, was made and was seconded as appropriate. The motion carried unanimously, and was so Ordered.
- 10-MSRC-219 Reed Construction was called for a **probable cause** determination. A motion to **grant**, was made and was seconded as appropriate. The motion carried unanimously, and was so Ordered.


❑ **Settlement Agreements**

The Settlement Agreements were managed as indicated above in the Motions and suspensions sections.

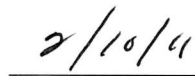
- ❑ **The Time Memo and Travel Vouchers** were signed and submitted for payment by the General Counsel.
- ❑ **NEXT MEETING:** The Commissioners acknowledged that MSRC is regularly scheduled for a regular two day meeting on Starting on **Thursday February 10, 2011**.
- ❑ **Adjournment:** Commissioner Childers made a motion to adjourn, which was seconded by Commissioner Sanders. The motion carried unanimously, and was so Ordered.

The next meeting of the Mine Safety Review Commission will be held on Thursday February 10, 2011. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:



Chair Hon. Joe F. Childers
Mine Safety Review Commission



Date